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CRIMINAL LAW AND PROCEDURE IN EUROPE¹

JOHN R. OLIVER²

Since the last meeting of the Institute your Committee has greatly increased its activities and has extended its correspondents to every country of Europe with the exception of Greece. It has also had an opportunity of getting into touch with jurists and criminologists in Australia. In all the more important European countries, permanent correspondents have been secured for the Committee, who have expressed their willingness to contribute at least once a year a report on the modern modifications in Criminal Law and Procedure in the countries in question. A number of these letters have already been received, have been translated and classified and have been transmitted to the Editor of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY for publication. Attached to this report is a statement containing the results of the more important correspondence received during the past year. This covers the countries of Italy, Switzerland, Holland, England, Belgium, and Norway. The most interesting reports have been those received from Holland, which have been translated and abstracted in the attached statement. There is also an article by Professor Hafter of the University of Zurich, which is submitted herewith. We have been disappointed in not receiving more material from the newly established European states, such as Poland, Czecho Slovakia, etc. The Committee has had the co-operation of the legations of these various countries in Washington, which have furnished the Committee with the names and addresses of their most prominent jurists and criminologists. Probably the unsettled conditions in these countries are responsible for our failure to secure prompt responses to our letters from them. Since the attached statement was drawn up the Committee has had new lines of communication opened up through the kind services of "L'Institut Intermédiaire International" at the Hague, which was founded in 1918 in order to make possible an interchange of scientific information between Europe and America. This Institute, of its own initiative, placed its services at the disposal of your Committee. A communication has also been received from Professor John Omsted, who is a prominent criminologist in Sweden

¹Read by title at the thirteenth annual meeting, in Cincinnati, November 19, 1921.

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this Committee and were sent to the Editor of our JOURNAL. Your and at the head of the Norwegian Association for the Prevention of Crime. Professor Omsted has sent the Committee a report of the work of his Association and promises frequent reports on modern modification of criminal law in Norway. Through the kindness of Mrs. Marguerite Harrison, who was for many months detained in a Moscow prison and who is a well known Baltimorean, the Committee has been enabled to get into touch with Russian prison authorities and hopes to be able to secure from them valuable details as to the working of criminal law under present conditions in Russia. Lines of communication with Austria and Germany are also becoming easier. A number of letters have been written to former friends of the chairman of this Committee in Austria and replies are expected very shortly. Conditions in Turkey are also of engrossing interest, but until a few weeks ago, it was impossible to secure any adequate lines of communication. At the present the chairman has been fortunate enough to find a friend among the members of the American High Commission in Constantinople from whom he expects to receive direct information as well as the addresses of those persons in authority in Constantinople who could supply this Committee with valuable data. A report from Melbourne, Australia, is also promised.

In reviewing the work of the Committee during the past year, we cannot but feel greatly encouraged at the manner in which our lines of communication are extending. Should the Institute see fit to continue this Committee in its present form, or in any other form agreeable to the Institute, we believe that we shall be able during the coming year to transmit to the Editor of the JOURNAL a number of long single articles written by various European authorities, as well as brief statements in the form of a classified report which will contain abstracts of the various letters received, and notes of interest touching on European conditions. The Committee has been impressed with the kindness and the willingness to co-operate which it has met with in approaching different European jurists and criminologists. They have all expressed a keen interest in the work of the Committee and, although busy men themselves, have been willing to write long letters and reports. This is especially true of authorities in Switzerland, Holland and Italy. The long letter from Professor Carrara of Turin has been already published in our JOURNAL, giving a brief account of the fundamental principles underlying the work of the Royal Commission appointed for the revision of the Italian Penal Code. Copies of the Preliminary Report of this Commission were also transmitted to

Committee has also been impressed with the friendliness and appreciation for American ideals and especially for the work of our Institute which has been manifested by our many correspondents in Europe. In some cases our Institute and its JOURNAL were unknown to our correspondents. In such cases copies of our JOURNAL were sent to them and the work and aims of our Institute were described. In this way the knowledge of the Institute and its activity is spreading among European jurists and criminologists.

CRIMINAL LAW AND PROCEDURE IN EUROPE

REPORTS ON CONDITIONS IN VARIOUS EUROPEAN COUNTRIES AS
TRANSMITTED TO THE CHAIRMAN OF THE COMMITTEE ON
CRIMINAL LAW AND PROCEDURE IN EUROPE BY THE
COMMITTEE'S PERMANENT CORRESPONDENTS

ITALY

A pamphlet of three hundred and sixty pages in Italian and English, which was sent by Professor Ferri in June, 1921, and entitled "Preliminary Project for an Italian Penal Code With Report Thereon by the Royal Commission," and which is too long to be abstracted here, has been sent to the Editor and its contents will be commented upon at another time in this JOURNAL. This report was accompanied by a personal letter from Professor Carrara of the University of Turin, which has already been published in this JOURNAL. This letter contained a brief and valuable summary of the principles underlying the work of the Italian Royal Commission.

SWITZERLAND

A lengthy manuscript has been received from Professor Hafter of the University of Zurich which deals with the changes in Criminal Law and Procedure in Switzerland during the War and since the Armistice. It is published in the present number of this JOURNAL.

HOLLAND

Thanks to the kindness of the Dutch Legation in Washington, the Committee has secured three valuable correspondents in Holland.

(1) Dr. Simons, Professor at the University of Utrecht, writes under date of September 2, 1921, that he is forwarding and will continue to send brief statements on the development of Criminal Law and Procedure in Holland for publication in the JOURNAL. This article has not yet been received.

(2) Professor Blok of the University of Leiden under date of the 10th of September writes as follows:

"It will be a pleasure to me to become a regular correspondent of your Committee. I can give you a brief statement of existing conditions in this letter. In the year 1915 a law was passed by which the

release of prisoners on probation was introduced, and which allowed a great extension of the power to place prisoners on probation. Before this act was introduced, a 'ticket of leave' could be issued only to such prisoners as had already served a sentence of more than three years. Since 1915 the privilege of probation may be extended to any prisoner who is condemned to more than nine months imprisonment, and who has already served two-thirds of his sentence. I may note in passing that penal servitude does not exist in our country. At the same time a general authority was given by the Crown to the proper authorities for the social reclamation of prisoners, not only of those who have been discharged after serving their entire sentence, but also of prisoners who have been placed on probation, or who are under a conditional sentence. We do not have the suspended sentence. The suspected person is only prosecuted by the state's attorney, if the state's attorney believes that there is sufficient grounds for prosecution. He is therefore not obliged to prosecute, and he is the only person who may begin a criminal prosecution of any kind. After such a prosecution, every delinquent who is found guilty is to be immediately sentenced as a general rule, but if the court thinks that he does not deserve a severer punishment than imprisonment for one year, the court may order that the sentence imposed shall not be executed if the delinquent abstains from criminal activity and observes the conditions which are fixed by the court for his social reclamation. Under such circumstances the court may place him under the supervision of a committee or of a single person, who will help him to observe the conditions imposed and who will befriend him generally.

"The general law already mentioned gives to the Minister of Justice the power to make financial grants from the treasury to those committees and persons who are endeavoring to reclaim the delinquents released under their supervision. In the more important cases the Minister of Justice is assisted by an advisory committee called 'The Centraal College voor de Reclasseering,' of which I am a member. This same committee received last year from the government an order to work out an entirely new penal system, for during the past year there has been a strong tendency to abolish our present system of separate confinement which at present prevails in our prisons. During the War it was somewhat difficult to continue this system, as the tiers of separate cells in the prisons were so crowded that the government was obliged to keep smugglers and petty delinquents in large cells that contained several men.

"Finally, during this year, 1921, the bill establishing a new Code of Criminal Procedure has been passed, and it is probable that this code will go into force next year. I could, of course, comment at great length upon this code. For the present I can only say that extreme modern radical tendencies, such as are exemplified in Russia, have not **had any influence** on the administration of criminal law in Holland, nor does it seem that their influence will ever be great. Of course, such tendencies do exist in Holland, and there are many among us, even members of the educated classes, who urge the necessity of **abolishing the criminal law altogether**. However, generally speaking, these theories have little hold on the common people.

"These brief notes will, I hope, suffice for the present. Should you desire any more information about any special point, I should be glad to send it to you."

(3) From His Honor Judge N. Muller of Alkmaar, Holland. Professor Muller writes under date of August 27th:

"You asked me to tell you what has happened in Holland in the field of Criminal Law and Practical Criminology during the past year, and I hasten with pleasure to fulfill your request.

"As a general introduction, I must tell you that public opinion in Holland is gradually awakening to a new interest in penal reform. As far as I can see, because of this new interest, is a general disgust with our present system of rigid solitary confinement. Practically every prisoner during the first five years of his detention is in solitary confinement day and night. The second reason why the Dutch people are demanding a change in our penal methods is the deepening of their belief in the power of education as a cure for crime rather than in the power of severe punishment. You know that there has appeared in Holland a Dutch translation of Mr. Osborne's book on 'Society and Prisons,' and it was most interesting and a great satisfaction to hear from all sides with what enthusiasm this book was received by people of greatly differing social spheres. Perhaps all this enthusiasm lacked a permanent foundation in an adequate understanding of the difficulties of prison and reformatory management. Nevertheless, it showed that part of our population desired a change and that, broadly spoken, they want to have it on American and educational lines, although they desire to preserve all that is peculiarly Dutch in our penal system and in our general ideas of prison management. Thirdly, there is another reason, the origin of which is less general, but which seems to be partly because of the increased interest in penal matters which I have mentioned. This is the development of what we are now accustomed to

call in Dutch 'Reclasseering,' that is, the organized social care for discharged prisoners. Through this a great number of aid societies and a number of private persons get into touch with delinquents, are given permission to enter prisons in order to visit prisoners, and so get an idea of what prisons and prisoners really are, and I think that the opinions of these newcomers in the penal field are not to be slightly regarded, for their opinions, although not always strictly scientific, are for that reason all the fresher and unclouded by old habits and customs of thought. Among these aid societies the most prominent is 'The Society for the Moral Improvement of Prisoners,' which is almost a hundred years old, but which is constantly developing on modern lines. It has a special place of honor, as it is interested in prison reform more than the numerous other aid societies, and in many respects it might be compared with the American Prison Association. This 'Reclasseering' movement is today one of the most interesting features in our field of work, as it is a movement which is attaining great influence, even in official circles; a movement which is gradually extending its activities from the mere care of discharged prisoners to the wider field of co-operation in the working out of our parole and probation laws. This movement is gradually becoming a really popular one. The numerous 'Reclasseerings,' or aid societies, are organized generally along the lines of the judicial divisions of our territory, in semi-official committees, the members of the committees being the representatives of these societies and representatives of the local authorities, e. g., the local state's attorney, the warden of the local prison, etc. These 'Reclasseering' Committees give advice in all cases of proposed parole and the authorities generally follow this advice, in giving the parole or in refusing it, in preparing a case that might be suitable for probation. The societies and the 'Reclasseering' Committees are attempting to secure an official position in our courts, in which they have already partially succeeded. The work of private aid societies and 'Reclasseering' Committees is carried on not only by volunteers but to a considerable extent by officers or officials appointed and paid by these private societies, which are largely subsidized by the government. Trained official workers are necessary, inasmuch as they are needed to make the careful reports on cases of proposed parole or probation, which must all be founded on a thorough and scientific investigation of each case. Here I should like to add one more thing. It is this: In Holland we are greatly in favor of private enterprises in this part of the criminological field, and, if I may say so, here is our one and only chance in the future to get ahead even of America in

modernizing our penal system. As far as I can see, you Americans believe that the future is all for the paid official, for the paid parole or probation officer, and that the use of volunteer workers is an antiquated and bothersome part of the system. Many people in Holland think the same thing. Nevertheless, to me, this conception appears to be fundamentally wrong. It will perhaps not give much trouble in the present, but, to my mind, it will hamper future evolution along these lines. It is my belief that the penal system of the future will be only partly intensive case work. I mean that only in the great minority of criminal cases is a thorough training necessary for the parole or probation officer. At least, it is only necessary so far as the most serious crimes are concerned. In the great majority of minor cases, apart from the treatment of the delinquent in prisons and other institutions, the expert probation and parole officer will only be the key of the future system in so far as he is supported and advised by volunteer helpers. But an even more important question seems to me to be this, How can we mobilize whole groups of our population for active co-operation in the fight against the bulk of our non-professional, non-habitual crime? I think that trade unions or other societies and clubs of workingmen—perhaps those societies in which the whole population of a district inhabited by workingmen in the big cities is organized into a single unit and groups of a similar nature—will have a large share in our penal system of the future, and I think that it is our most important duty at present to further a development in that direction; in other words, to make the interest in penal matters spread widely among groups of citizens and among broader and broader divisions of the population. In Holland we have made on a small scale some interesting attempts, and we witnessed some interesting developments in this direction. But in the scope of this brief survey, I cannot develop my idea any further or give you in more detail the results of our first experiment. Moreover, all this does not touch the events of last year about which I intended to write, but is merely a hope for the future. I must give you a few words more about the changes in prison management and jurisdiction during the last year.

“A little over a year ago, a Royal Commission was appointed consisting mainly of the ‘Centraal Committee for Reclasseering,’ with a few additional outside members. This committee is to investigate the proposed changes in our penal system and to give advice to the government concerning such changes as seem desirable.

“Of more immediate importance are two government measures which were taken up a few years ago. During the War, on account

of our bad economic conditions, our prisons were overcrowded and numerous sentences could not be executed for want of prison room. This resulted in an emergency act that was passed to allow a temporary and a partial abandonment of the system of solitary confinement. One of the big buildings of the Labor Colony for Vagrants was used as a prison in which sentences were served in community. The results of this experiment, which is still being carried on, are not unsatisfactory. It seems, however, that this system, which is almost a new thing for Holland, has given rise to some legitimate complaint, which in my opinion may be easily accounted for by the unfavorable circumstances under which this experiment was carried out. Our prison officials had to work without being sufficiently prepared for the new method, with a staff not chosen for this especial purpose, although there were many excellent prison wardens, especially Mr. Franck, who tried to introduce to a certain extent a system of self-government by the prisoners themselves, and with a great number of prisoners whom there was no time to classify so as to be able to segregate those who were unfit for a community prison and to develop the others in homogeneous groups.

"The second interesting government measure was to allow lectures and musical performances to be held in our prisons. This does not break the rule of solitary confinement, as in our prison chapels the prisoners sit in rows of little cages in which no man can see his neighbor, and in which they are obliged to keep absolute silence. But, anyhow, these lectures do break to a certain extent the mental solitude of individual confinement, and they do introduce into our dreary prisons some slight element of life and education.

"Now about penal jurisdiction. A few acts have recently passed Parliament. One of these provides for children's courts. We have had children's courts for many years, but up to the present they were presided over by three judges who were not specially trained for the work. In the act, however, and this I consider to be one of its most important features, is provision that one judge shall preside over the children's court, and that he shall be specially appointed, so that before long we hope to get a set of children's court judges who are really expert officials.

"The second act provides for the institution of police judges formed after the model of the English police courts. Until now, all penal cases, no matter how insignificant, were tried by three judges. This enormous waste of time and energy will soon be a thing of the past, for now the police court is presided over by one judge only. Apart from the easier solution and the simpler jurisdiction in simple

police cases, we hope that the use of this act will give us judges who are expert in dealing with minor delinquents and who are not only well trained in the law but also in the psychological and social side of criminal jurisdiction.

"The last act about which I wish to tell you is an act that introduced a rather important change in criminal procedure. By this act, which follows modern lines of thought, the condition of the accused and of his defense is considerably improved. It is remarkable that, while all the reforms which deal with the 'Reclasseering' Committees and the prison system have awakened a great deal of public interest, this change in criminal procedure has passed entirely unnoticed by public opinion. Nevertheless, I think that there is no serious public objection to the moderate strengthening of the position of the defense in criminal procedure. It may be natural, however, that public opinion was not greatly interested in this reform. The sentencing of a man who is possibly innocent is not now the great danger of our criminal procedure. By far the greater dangers from the point of view of society, and from the point of view of the criminal as well, are the dangers that arise from our inadequate penal system, and this is what the general public of Holland is fortunately beginning to realize. I hope that I have given you some idea of what we in Holland are thinking and doing in the field of practical criminology. As you see, what we are doing and what we wish to do is in some respects very American. In other respects, it is very Dutch, and Dutch we hope that it will continue to be. I am

"Yours faithfully,

"(Signed) N. MULLER."

ENGLAND

The establishing of lines of communication with criminologists in Great Britain has been somewhat slow and difficult. Nevertheless, letters have been received from several important persons, which promise further interesting information. Dr. Oliver wrote in April, 1921, a letter to the *Lancet*, which is one of the most important medical periodicals of Great Britain. This letter was duly published and resulted in a number of answers from English physicians. In his letter Dr. Oliver had called attention to the general subject of medical services established in connection with the criminal courts, and had also asked for information from England touching on this subject and on other matters of medico-legal interest. Letters were received by Dr.

Oliver from Dr. E. Alfred West, F. R. C. S., from Dr. N. Hamblin Smith, Medical Officer of His Majesty's Prison at Birmingham, England, an especially valuable letter from the Secretary of the Society of Comparative Legislation, in which the Committee was referred to Dr. James Young of London, who is especially prominent as a criminologist. The Society of Comparative Legislation has promised to supply this Committee with details concerning proposed legislation in England that follows modern thought in Criminology and Prison Reform. During the next few months we hope to have some detailed statement and reports from our English correspondents.

OTHER EUROPEAN COUNTRIES

Numerous letters to Poland have never been answered at all. Several letters to Russia brought forth a single reply, which gave a very distressing picture of the fate of those men who were formerly authorities in criminological matters. Of these, the writer could only inform us that two were dead, that others were exiled, and that still others were probably imprisoned somewhere. It may be possible, however, to communicate directly with some of the present authorities of the present Russian government. Mrs. Harrison, a Baltimore woman, has just returned to America after having been imprisoned for fifteen months in Russia. Through her we hope to obtain the names and addresses of existing Russian officials who may be able to give our JOURNAL interesting information. Conditions in Austria are also so chaotic that the chairman has not been able to get into communication with a number of judges and criminologists who were once, before the War, personal friends of his, but whose present addresses are unknown to him. As soon as diplomatic relations are restored between Austria and Germany and the United States, it will be possible to secure lines of communication with these two countries. In Belgium the Committee has two correspondents in Brussels; also one correspondent in Norway, who is Inspector of Prisons at Christiania, and who has promised a report on Scandinavian conditions in the near future. Roumania and the newly formed countries of Central Europe have as yet not replied to our letters, which were written to persons of authority whose names were supplied to us by the legations of their respective countries. A new and unexpected line of communication with Turkey has been opened through a personal acquaintanceship of the chairman with a member of the American High Commission in Constantinople.

OTHER COUNTRIES OUTSIDE OF EUROPE

An interesting letter has been received by this Committee from Australia, from Dr. James Booth of Melbourne. Dr. Booth is greatly interested in criminological problems, and has expressed himself as willing to transmit reports on conditions in Melbourne for publication in the JOURNAL.

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The chairman of this Committee would be greatly indebted to any members of the Institute who have any direct communication with European countries, or who could suggest to the chairman the names of any persons who would be valuable as correspondents of this Committee.